

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, September 13, 2023

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 Unless other arrangements have been made in advance with the Court, all appearances for this calendar will be via Zoom and not via Court Call. [See Judge Kaufman's posted procedures titled "phone/video appearances" on the Court's webpage.]
All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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CONT...

Chapter

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Wednesday, September 13, 2023

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9:30 AM

1:23-10943 Yerev Breskin

Chapter 7

#1.00 Motion for relief from stay [RP]

JR JAINCLAN FOUNDATION
VS
DEBTOR
8765 Waters Road, Moorpark, CA 90321

fr. 7/19/23; 8/23/23(stip)

Docket 11

Tentative Ruling:

- NONE LISTED -

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Yerev Breskin

Pro Se

Movant(s):

JR JAINCLAN FOUNDATION

Represented By
Benjamin R Levinson ESQ

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, September 13, 2023

Hearing Room 301

9:30 AM

1:23-10943 Yerev Breskin

Chapter 7

#2.00 Motion for relief from stay [RP]

JR JAINCLAN FOUNDATION
VS

DEBTOR

4833 Morella Ave., Valley Village, CA 91607

fr. 7/19/23' 8/23/23(stip)

Docket 9

Tentative Ruling:

- NONE LISTED -

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|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Yerev Breskin

Pro Se

Movant(s):

JR JAINCLAN FOUNDATION

Represented By
Benjamin R Levinson ESQ

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, September 13, 2023

Hearing Room 301

9:30 AM

1:20-10276 Hormoz Ramy

Chapter 7

#3.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 6/27/23(stip); 8/9/23(stip)

Stip to continue filed 8/30/23

Docket 160

***** VACATED *** REASON: Hearing is continued to 10/18/23 at 9:30 AM
per order entered on 8/31/23 [Dkt. 206]**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
|--------------------------|

Debtor(s):

Hormoz Ramy

Represented By
Siamak E Nehoray

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jennifer C Wong

Trustee(s):

David Seror (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov
Tamar Terzian
Ryan Coy

**United States Bankruptcy Court
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Wednesday, September 13, 2023

Hearing Room 301

9:30 AM

1:23-10459 Raquel Rosales-Yapo

Chapter 13

#4.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE
VS
DEBTOR

fr. 8/9/23

Stip for adequate protection filed 8/21/23

Docket 29

***** VACATED *** REASON: Order approving stip entered 8/22/23. [Dkt. 34]**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
|--------------------------|

Debtor(s):

Raquel Rosales-Yapo

Represented By
Julie J Villalobos

Movant(s):

Deutsche Bank National Trust

Represented By
Dane W Exnowski

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:30 AM

1:19-10045 Roman Lopez

Chapter 13

#5.00 Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB
VS
DEBTOR

fr. 8/16/23

Docket 45

Tentative Ruling:

- NONE LISTED -

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Roman Lopez

Represented By
Kevin T Simon

Movant(s):

Wilmington Savings Fund Society,

Represented By
Erin Elam
Fanny Zhang Wan
Theron S Covey

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, September 13, 2023

Hearing Room 301

9:30 AM

1:22-10258 Gayane Khachatryan

Chapter 13

#6.00 Motion for relief from stay [RP]

LOANCARE, LLC
VS
DEBTOR

fr. 8/16/23

Docket 54

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent may contact the debtor by telephone or written correspondence to offer such an agreement.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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CONT... Gayane Khachatryan

Chapter 13

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|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Gayane Khachatryan

Represented By
Sevan Gorginian

Movant(s):

LoanCare, LLC

Represented By
Nichole Glowin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:23-11075 Sharon Dawn Behdjou

Chapter 7

#7.00 Motion for relief from stay [UD]

HEMANT K. AHUJA, TRUSTEE FOR THE
EARLE GERSTEIN RESIDENCE TRUST
VS
DEBTOR

Docket 8

***** VACATED *** REASON: Case dismissed on 8/18/23.**

Tentative Ruling:

- NONE LISTED -

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Sharon Dawn Behdjou

Pro Se

Movant(s):

Hemant K. Ahuja, Trustee for The

Represented By
Barry L O'Connor

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:22-11342 Jiran Saevitzon

Chapter 7

#8.00 Motion in Individual Case for Order Imposing a Stay or
Continuing the Automatic Stay as the Court Deems Appropriate

Docket 47

Tentative Ruling:

The Court will continue the hearing to **September 27, 2023 at 9:30 a.m.**
Appearances for the September 13, 2023 hearing are excused.

The debtor must cure the following notice deficiency:

On November 16, 2022, the debtor filed a voluntary chapter 7 petition initiating this case. In her schedules, the debtor listed an interest in property located at 4244 Woodcliff Road, Sherman Oaks, California 91403 (the "Property"). The Property is encumbered by a first deed of trust, securing a promissory note. According to the debtor's schedule D, Mill City has a secured claim against the Property in the amount of \$1,800,000. Mill City did not file a proof of claim in this case. On April 12, 2023, the debtor received a discharge.

On May 30, 2023, the debtor filed a chapter 13 petition. According to the debtor's schedule D, Mill City has a secured claim in the amount of \$1,836,388.58. On July 12, 2023, Mill City filed a proof of claim asserting a secured claim in the amount of \$1,841,073.01, with arrearages in the amount of \$380,294.43. In its proof of claim, Mill City indicated that notices should be sent to NewRez LLC dba Shellpoint Mortgage Servicing, P.O. Box 10826, Greenville, S.C. 29603-0826 ("Proof of Claim Address"). On August 16, 2023, the Court entered an order dismissing the chapter 13 case.

On August 24, 2023, the debtor filed a motion to reopen her chapter 7 case for the limited purpose of filing two motions to avoid liens. On August 29, 2023, the Court

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9:30 AM

CONT... Jiran Saevitzon

Chapter 7

entered an order reopening the chapter 7 case. Thereafter, the debtor filed the motions to avoid liens.

On August 30, 2023, the debtor filed a *Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* (the "Motion") [doc. 47]. To date, opposition to the Motion has not been filed.

Here, the debtor did not properly serve the Motion and provide notice of the hearing thereon and the deadline to file a response on Mill City in accordance with Fed. R. Bankr. P. 4001(a)(1) and Fed. R. Bankr. P. 7004(b)(3). The debtor did not serve Mill City at its Proof of Claim Address nor did the debtor serve Mill City to the attention of an officer, a managing or general agent, or to any other agent authorized to receive service of process.

Accordingly, since the debtor's notice is insufficient under the applicable rules, the debtor must file and properly serve the Motion, notice of the continued hearing and the deadline to file a written response on Mill City at its Proof of Claim Address, **no later than September 15, 2023**. The debtor is required to provide service by overnight mail or email. Any opposition to the Motion must be filed and served on the debtor **so that it is received no later than September 25, 2023**.

The Court will prepare the order.

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| Party Information |
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Debtor(s):

Jiran Saevitzon

Represented By
Mark E Goodfriend

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9:30 AM

CONT... Jiran Saevitzon

Chapter 7

Movant(s):

Jiran Saevitzon

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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9:30 AM

1:23-11034 Karen Garush Berkibekyan

Chapter 13

#9.00 Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST
VS
DEBTOR

Docket 16

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

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| Party Information |
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Debtor(s):

Karen Garush Berkibekyan

Represented By
Harout G Bouldoukian

Movant(s):

Financial Services Vehicle Trust

Represented By
Cheryl A Skigin

**United States Bankruptcy Court
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CONT... Karen Garush Berkibekyan

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

9:30 AM

1:21-11211 Carla Darlene Hermanson

Chapter 13

#10.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 29

Tentative Ruling:

- NONE LISTED -

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|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Carla Darlene Hermanson

Represented By
Gregory M Shanfeld

Movant(s):

Toyota Lease Trust as service by

Represented By
Kirsten Martinez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, September 13, 2023

Hearing Room 301

12:00 PM

1: -

Chapter

#0.00 THIS ZOOM INFORMATION IS FOR REAFFIRMATION HEARINGS ONLY

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Meeting ID: 160 702 4300

Password: 020465

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12:00 PM

CONT...

Chapter

the tab "Telephonic Instructions."

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Hearing Room 301

12:00 PM

1:23-10403 Marina Elizabeth Avelar

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and The Bank of New York Mellon
fr. 8/22/23

Docket 8

Tentative Ruling:

- NONE LISTED -

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|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Marina Elizabeth Avelar

Represented By
Francis Guilardi

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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12:00 PM

1:23-10698 Julio Ortiz and Rose Mary Ortiz

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and
American Honda Finance Corporation

fr. 8/22/23

Docket 12

Tentative Ruling:

- NONE LISTED -

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| Party Information |
|--------------------------|

Debtor(s):

Julio Ortiz

Represented By
Leonard Pena

Joint Debtor(s):

Rose Mary Ortiz

Represented By
Leonard Pena

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

12:00 PM

1:23-10722 Rachel Reitter

Chapter 7

#3.00 Reaffirmation Agreement Between Debtor and Wells Fargo Bank, N.A.

fr. 8/22/23

Docket 10

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Rachel Reitter

Represented By
Susan Jill Wolf

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, September 13, 2023

Hearing Room 301

12:00 PM

1:23-10790 Raffi Parikian and Kristine Parikian

Chapter 7

#4.00 Reaffirmation Agreement Between Debtor and United Wholesale Mortgage, LLC

Docket 22

Tentative Ruling:

- NONE LISTED -

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| Party Information |
|--------------------------|

Debtor(s):

Raffi Parikian

Represented By
Eileen Keusseyan

Joint Debtor(s):

Kristine Parikian

Represented By
Eileen Keusseyan

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, September 13, 2023

Hearing Room 301

12:00 PM

1:23-11033 Ronald Lee Lewis

Chapter 7

#5.00 Reaffirmation Agreement Between Debtor and Partners Federal Credit Union

Docket 13

Tentative Ruling:

- NONE LISTED -

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Ronald Lee Lewis

Represented By
Michael F Chekian

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

1:30 PM

1:20-10276 Hormoz Ramy

Chapter 7

Adv#: 1:23-01024 WVJP 2017-2, LP v. Seror et al

#11.00 Status conference re: complaint for: (1) Declaratory relief; and
(2) Relief from the automatic stay

Docket 1

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Hormoz Ramy

Represented By
Siamak E Nehoray

Defendant(s):

David Seror

Represented By
Jessica L Bagdanov
Ryan Coy

Hormoz Ramy

Pro Se

Plaintiff(s):

WVJP 2017-2, LP

Represented By
Todd Curry

Trustee(s):

David Seror (TR)

Represented By
Steven T Gubner
Jessica L Bagdanov
Tamar Terzian
Ryan Coy
Alan I Nahmias

**United States Bankruptcy Court
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1:30 PM

1:23-10324 Lisa Fancher

Chapter 13

Adv#: 1:23-01026 Mayorga v. Fancher

#12.00 Status conference re: complaint for nondischargeability
and objecting to discharge

Docket 1

***** VACATED *** REASON: Another Summons issued 8/31/23. Hearing
is continued to 11/1/23 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Lisa Fancher

Represented By
James R Selth

Defendant(s):

Lisa Fancher

Pro Se

Plaintiff(s):

Louis Mayorga

Represented By
Eduardo Martorell

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, September 13, 2023

Hearing Room 301

2:00 PM

1:13-14649 Marilyn S. Scheer

Chapter 7

Adv#: 1:23-01016 Scheer v. The State Bar of California, a public corporation

#13.00 Motion to Dismiss Plaintiff Marilyn S. Scheer's Complaint for
Declaratory and Injunctive Relief and Damages

fr. 8/23/23

Docket 4

Tentative Ruling:

The Court will grant the motion, with leave to amend the complaint.

I. BACKGROUND

A. State Bar Disciplinary Proceedings

On May 25, 2012, the State Bar of California (the "State Bar"/"Defendant") initiated disciplinary proceedings against Marilyn S. Scheer ("Debtor"/"Plaintiff") in case no. 11-O-10888 et al. (the "First Disciplinary Proceeding"). Exh. 6 to *Plaintiff (Debtor) Marilyn S. Scheer's Complaint for Declaratory and Injunctive Relief, and Damages for: (1) Violation of the Permanent Injunction of 11 U.S.C. §§ 105, 524 & 727 and (2) Discriminatory Treatment Under 11 U.S.C. §§ 105 & 525(a)* (the "Complaint"), p. 1 [doc. 1]. The First Disciplinary Proceeding involved Debtor's entry into fee agreements with, and collection of fees from, clients located in California and in other states for residential loan modification services. Exh. 1 to the Declaration of Suzanne C. Grandt (the "Grandt Declaration"), pp. 1-4 [doc. 6]. [FN 1]. As determined by the State Bar Court of California Review Department (the "Bar Court"): (1) although Debtor was licensed to practice in California, she was not licensed to practice in any state or federal court in any of the additional states, nor did she affiliate with a local attorney in any of these additional states; and (2) Debtor's fee agreements did not state that she was not licensed to practice in those additional states. *Id.*

On July 19, 2013, the State Bar initiated disciplinary proceedings in case no. 12-O-14071 et al. (the "Second Disciplinary Proceeding" and together with the First Disciplinary Proceeding, the "Disciplinary Actions"). Exh. 6 to the Complaint, p. 1.

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CONT...

Marilyn S. Scheer

Chapter 7

The Second Disciplinary Proceeding involved Debtor's entry into fee agreements for loan modification matters in three states in which Debtor was not licensed to practice. Exh. 4 to the Grandt Declaration, pp. 3-5. As determined by the State Bar Court of California Review Department, Debtor's fee agreements did not state that she was not licensed to practice in those states. *Id.*, p. 9.

On March 18, 2014, in connection with the First Disciplinary Proceeding, the Bar Court found that Debtor engaged in the unauthorized practice of law in 11 different states, and that she was not entitled to charge or collect her fees in connection with those matters (the "March 2014 Opinion"). Exh. 1 to the Grandt Declaration, pp. 6 and 13. In addition, in the March 2014 Opinion, the State Bar Review Court found that Debtor violated Cal. Civil Code § 2944.7 in connection with four California matters. *Id.*, p. 13.

On July 16, 2014, the Supreme Court of California (the "California Supreme Court") entered an order disciplining Debtor in the First Disciplinary Proceeding, which included a provision requiring that Debtor pay costs to the State Bar (the "July 2014 Order"). Complaint, ¶ 12 and Exhs. 2, 5 and 6 thereto. On October 3, 2014, the costs in the First Disciplinary Proceeding, payable to the State Bar, were reduced to \$20,005. Exhs. 5 and 6 to the Complaint.

On September 28, 2016, in connection with the Second Disciplinary Proceeding, the Bar Court found that Debtor engaged in the unauthorized practice of law in additional matters in a number of different states, and that she was not entitled to charge or collect her fees in connection with those matters. Exh. 4 to the Grandt Declaration (the "September 2016 Opinion"), pp. 7 and 11-12.

On March 1, 2017, the California Supreme Court entered an order disciplining Debtor in the Second Disciplinary Proceeding, which included an order that Debtor pay costs to the State Bar (the "March 2017 Order" and together with the July 2014 Order, the "Disciplinary Orders"). Complaint, ¶ 12 and Exhs. 3 and 5 thereto; Exh. 6 to the Complaint, p. 2. Together, the costs from the First Disciplinary Proceeding and the Second Disciplinary Proceeding, which were awarded pursuant to Cal. Bus. & Prof. Code § 6086.10, totaled \$40,704 (the "Costs"). Complaint, ¶ 15 and Exh. 5 thereto.

1. The July 2014 Order

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CONT... Marilyn S. Scheer

Chapter 7

Pursuant to the July 2014 Order, Debtor was suspended from the practice of law in California for three years. Exh. 2 to the Complaint. The execution of that suspension period was stayed, and Debtor was placed on probation for three years, subject to certain conditions. These conditions included that Debtor was suspended from practice of law for a minimum of two years of probation, until the following requirements were met: (1) that Debtor make restitution payments to several payees, or reimburse the State Bar's Client Security Fund (the "CSF"); (2) that Debtor provide proof to the Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law; (3) that Debtor take and pass the Multistate Professional Responsibility Examination during the period of her suspension and provide proof of such passage to the State Bar's Office of Probation within the same period; (4) that Debtor comply with California Rules of Court, rule 9.20, and perform acts specified in subdivisions (a) and (c) of that rule within a certain period of time; and (5) that Debtor pay costs awarded to the State Bar in accordance with Cal. Bus. & Prof. Code §§ 6086.10 and 6140.7. *Id.* In addition, the July 2014 Order provided that Debtor must comply with other conditions of probation recommended by the Bar Court in the March 2014 Opinion. *Id.*; Exh. 1 to the Grandt Declaration.

2. The March 2017 Order

Pursuant to the March 2017 Order, Debtor was suspended from the practice of law in California for two years. Exh. 3 to the Complaint. The execution of that suspension period was stayed, and Debtor was placed on probation for three years, subject to certain conditions. These conditions included that Debtor was suspended from practice of law until the following requirements were met: (1) that Debtor make restitution payments to a number of payees, or reimburse the CSF; (2) that, in the event Debtor's actual suspension lasted for two years or longer, Debtor provide proof to the Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law; (3) that, in the event Debtor's actual suspension lasted for 90 days or more, Debtor comply with California Rules of Court, rule 9.20, and perform acts specified in subdivisions (a) and (c) of that rule within a certain period of time; and (4) that Debtor pay costs which were awarded to the State Bar in accordance with Cal. Bus. & Prof. Code §§ 6086.10 and 6140.7. *Id.* In addition, the March 2017 Order provided that Debtor must comply with other conditions of probation recommended by the Bar Court in the September 2016 Opinion. *Id.*; Exh. 4 to the Grandt

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B. The Bankruptcy Case and this Adversary Proceeding

On July 12, 2013, Debtor filed a chapter 7 petition, initiating case no. 1:13-bk-14649-VK (the "Bankruptcy Case"). On November 18, 2013, the Court entered an order of discharge (the "Discharge Order") [Bankruptcy Case, doc. 26], and the Bankruptcy Case was closed [Bankruptcy Case, doc. 28]. In May 2023, Plaintiff filed a motion to reopen the Bankruptcy Case [Bankruptcy Case, doc. 32], in order to file the pending adversary proceeding, and the Court entered an order granting that motion [Bankruptcy Case, doc. 34].

Subsequently, Plaintiff filed the Complaint against Defendant, initiating adversary proceeding no. 1:23-ap-01016-VK. In relevant part, the Complaint makes the following factual allegations:

Beginning in 2012, Defendant pursued Plaintiff in a series of consolidated actions involving her efforts to assist homeowners with obtaining loan modifications in 2010. On July 12, 2013, Plaintiff filed the Bankruptcy Case. On November 18, 2013, the Discharge Order was entered. The Discharge Order included pre-petition client fees that formed the basis of Defendant's charges against Plaintiff.

Despite the Discharge Order, Defendant continued its proceedings against Plaintiff, without first seeking relief from the Court regarding the discharge injunction. Plaintiff's petitions for review of the Disciplinary Actions resulted in the Disciplinary Orders, which suspended Plaintiff's law license until she made restitution payments in the amount of \$134,400 plus interest to her former clients or the CSF. Costs also were imposed against Plaintiff under Cal. Bus. & Prof. Code § 6086.10.

The Disciplinary Orders, which conditioned the reinstatement of Plaintiff's law license on payment of discharged debt, are void. Defendant violated and continues to violate the anti-discriminatory provisions of section 525(a) by refusing to reinstate Plaintiff's law

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license, which is a valuable property right under California law. In addition, by acting as a collection agent in pursuing restitution for third parties, Defendant perfected a lien on Plaintiff's law license after the Discharge Order was entered.

Although Defendant concedes that the restitution and CSF reimbursement cannot be enforced against Plaintiff, Defendant refuses to concede on the Costs, which Defendant incurred in pursuing the Disciplinary Actions before the California Supreme Court. Defendant cannot seek costs to collect on this discharged debt.

See Complaint, ¶¶ 8-12, 14, 16, 19, 21, 23-24 and 26-27.

On these allegations, Plaintiff asserts the following claims: (1) violation of the discharge injunction under 11 U.S.C. §§ 105, 524 and 727; and (2) discriminatory treatment under 11 U.S.C. §§ 105 and 525(a). To the Complaint, Plaintiff attached the following documents, among others: (1) the July 2014 Order, as Exh. 2; (2) the March 2017 Order, as Exh. 3; (3) a certificate of costs dated April 23, 2014, which reflects costs in the amount of \$49,469.50 in connection with the First Disciplinary Proceeding, an order dated October 3, 2014 reducing costs associated with the First Disciplinary Proceeding from \$49,469.50 to \$20,005 and a certificate of costs dated November 16, 2016, which reflects costs in the amount of \$20,699 associated with the Second Disciplinary Proceeding, collectively, as Exh. 5; and (4) the order of the State Bar Court of California Hearing Department, dated April 4, 2023, denying Plaintiff's motion for relief from the Costs or to declare the Costs unenforceable, as Exh. 6.

On June 23, 2023, Defendant filed the *Motion to Dismiss Plaintiff Marilyn S. Scheer's Complaint for Declaratory and Injunctive Relief and Damages* (the "Motion") [doc. 4], an accompanying memorandum [doc. 5], the Grandt Declaration and a request for judicial notice ("Defendant's RJN") [doc. 7]. Defendant asks the Court to take judicial notice of a number of documents, including, among others: (1) the March 2014 Opinion; (2) the September 2016 Opinion; and (3) the Plaintiff's motion for relief from the Costs or to declare the Costs unenforceable. Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 16] and evidentiary objections to Defendant's RJN (the "Evidentiary Objections") [doc. 17], and Defendant filed a reply to the Opposition [doc. 19] and a response to the Evidentiary Objections [doc. 20].

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II. LEGAL AUTHORITY

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "[Rule] 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him." *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (9th Cir. BAP 1994).

B. Request for Judicial Notice

As a general rule, when deciding a Rule 12(b)(6) motion, a court may not consider any material beyond the pleadings. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Rule 12(b)(6) expressly provides that when "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for

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summary judgment and disposed of as provided in Rule 56...." Rule 12(b)(6).

There are, however, two exceptions to the requirement that consideration of extrinsic evidence converts a 12(b)(6) motion to a summary judgment motion. First, a court may consider material which is properly submitted as part of the complaint on a motion to dismiss without converting the motion to dismiss into a motion for summary judgment. If the documents are not physically attached to the complaint, they may be considered if the documents' authenticity ... is not contested and the plaintiff's complaint necessarily relies on them. Second, under Fed.R.Evid. 201, a court may take judicial notice of matters of public record.

Lee, 250 F.3d at 688-89 (quotations and citations omitted).

"[W]hen a court takes judicial notice of another court's opinion, it may do so not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity." *Id.* at 690 (internal quotations omitted); *see also Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record."). In addition, Fed. R. Evid. 201(b) states, in relevant part, "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

C. Leave to Amend

Under Rule 15(a)(1)(B), a plaintiff has a one-time right to file an amended complaint "as a matter of course" 21 days after the earlier of (i) service of a responsive pleading or (ii) service of a Rule 12(b), (e) or (f) motion. Even if a plaintiff does not have the right to amend "as a matter of course," the court may grant leave to amend. Rule 15(a)(2) provides that "the court should freely give leave [to amend] when justice so requires." Dismissal without leave to amend is appropriate, however, when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203

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F.3d 1122, 1127 (9th Cir. 2000).

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D. Dischargeability of Debt

"A debtor is entitled to a discharge of all pre-petition debts except for nineteen categories of debts set forth in the Code." *In re Albert-Sheridan*, 960 F.3d 1188, 1192 (9th Cir. 2020) (citing 11 U.S.C. §§ 727(b) & 523(a)). According to section 523(a)(7), a debt is not dischargeable "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty." Section 523(a)(7) requires proof of three elements: the debt must (1) be a fine, penalty, or forfeiture; (2) be payable to and for the benefit of a governmental unit; and (3) not constitute compensation for actual pecuniary costs. *Kelly v. Robinson*, 479 U.S. 36, 51, 107 S.Ct. 353, 93 L.Ed.2d 216 (1986).

In *Kelly*, the Supreme Court considered whether restitution obligations, imposed as conditions of probation in state criminal proceedings, were dischargeable. With the "deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings" in mind, the Supreme Court held that such restitution was nondischargeable under section 523(a)(7). *Id.*, at 53. The Supreme Court reasoned that permitting discharge of the restitution order "would hamper the flexibility of state criminal judges in choosing the combination of imprisonment, fines, and restitution most likely to further the rehabilitative and deterrent goals of state criminal justice systems," and that it was unlikely that Congress "would limit the rehabilitative and deterrent options available to state criminal judges." *Id.*, at 49. The Supreme Court further explained that, although restitution resembled a judgment "for the benefit of" the victim, the overall role of restitution in "the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation," meant that the criminal restitution actually operated "for the benefit of" the state. *Id.*, at 52–53.

In *In re Findley*, 593 F.3d 1048, 1054 (9th Cir. 2010), the Court of Appeals for the Ninth Circuit held that costs associated with attorney disciplinary proceedings are nondischargeable under section 523(a)(7). There, the State Bar initiated disciplinary proceedings against the debtor, who was an attorney. In addition to a suspension and probationary period, the State Bar assessed a fee under Cal. Bus. & Prof. Code § 6086.10 [FN 2] for the cost of the disciplinary proceedings. The debtor did not pay the

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cost, which blocked the reinstatement of his license to practice law. As explained by the Court of Appeals, although the costs were payable to and for the benefit of a governmental unit, Cal. Bus. & Prof. Code § 6086.10(e) "clarifie[d] that the California legislature's intent in imposing attorney disciplinary costs was 'to promote rehabilitation and to protect the public,' rather than to provide compensation." *Id.*, at 1052–53.

Recently, in *Kassas v. State Bar of California*, 49 F.4th 1158, 1164 and 1166 (9th Cir. 2022), the Court of Appeals similarly held that attorney disciplinary costs imposed pursuant to Cal. Bus. & Prof. Code § 6086.10 are excepted from discharge under section 523(a)(7). *See also Albert-Sheridan*, 960 F.3d at 1192. On the other hand, the Court of Appeals also held that obligations to pay restitution to former clients and to reimburse the State Bar for payments by the CSF are dischargeable.

In distinguishing attorney disciplinary costs imposed under Cal. Bus. & Prof. Code § 6086.10 from restitution and reimbursement of the CSF, the Court of Appeals noted that "the stated purpose of the CSF is 'to relieve or mitigate *pecuniary losses* caused by the dishonest conduct of active members of the State Bar.'" *Id.*, at 1164 (citing Cal. Bus. & Prof. Code § 6140.5(a)) (emphasis in original). "Once the CSF has made payment to a victim, the attorney's obligation is to '*reimburse* the fund for all moneys paid out.'" *Id.*, at 1165 (citing Cal. Bus. & Prof. Code § 6140.5(c)) (emphasis in original). "That obligation distinguishes th[o]se payments from fines and penalties because they are reimbursement for victims' actual pecuniary loss." *Id.*

In *In re Scheer*, 819 F.3d 1206, 1210 (9th Cir. 2016), which also involved Plaintiff and her receipt of a discharge, the Court of Appeals addressed whether the debt which Plaintiff owed to a former client was dischargeable under section 523(a)(7). *Id.*, at 1208. There, an arbitrator had awarded Plaintiff's client a full refund of improperly collected advanced fees, plus the arbitration filing fee. The arbitrator held that Plaintiff had violated Cal. Civil Code § 2944.7(a) by receiving advanced fees for a residential mortgage modification services. Plaintiff did not pay the full award, and Plaintiff's right to practice law was suspended until, among other things, she paid the award to the client in full. The Court of Appeals held that the debt at issue *was* dischargeable. *Id.*, at 1211. Because "the debt at issue was effectively the amount that [Plaintiff] improperly received from a client, but did not pay back..., the [debt] [wa]s not a fine or penalty, but compensation for actual loss." *Id.*, at 1211.

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In *Scheer*, the Court of Appeals also discussed the confusion created by *Kelly*, which had resulted in conflicting holdings regarding the dischargeability of restitution obligations, as follows:

[S]ome courts have held that civil restitution payable to the government and then distributed to fraud victims is dischargeable But other courts hold that the costs of an attorney disciplinary proceeding, payable to the government, are nondischargeable, as are funds owed to the State Bar's Client Security Fund.

Id. (citations and emphasis omitted).

E. The Discharge Injunction Under 11 U.S.C. § 524(a)

Under 11 U.S.C. § 524(a), absent an applicable exception, a discharge "operates as an injunction against the commencement or continuation of an action ... to collect, recover or offset any [discharged] debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2).

The California Supreme Court has made clear that "attorney discipline proceedings are in no way designed or intended to be debt collection mechanisms for private parties, even where attorneys are ordered to pay money to a third party." *Bach v. State Bar*, 52 Cal.3d 1201, 1207 (1991). *See also Chadwick v. State Bar*, 49 Cal.3d 103, 111 (1989) (principal concern of attorney discipline "is always the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest possible professional standards for attorneys.").

To determine whether police and regulatory action violates the discharge injunction, bankruptcy courts have used the analysis applicable to 11 U.S.C. § 362(b)(4). *See, e.g., In re Phillips*, 368 B.R. 733, 742 (Bankr. N.D. Ind. 2007) ("[t]he test applicable to the determination of a willful violation of the automatic stay under § 362 is equally applicable to the determination of a willful violation of the post-discharge injunction under § 524); *In re Damm*, 2001 WL 34065016 (Bankr. C.D. Ill. 2001) (holding that state agency's filing of complaint seeking injunctive relief and civil penalties against chapter 7 debtor constituted legitimate exercise of police powers and did not

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constitute willful violation of discharge injunction); and *In re Pincombe*, 256 B.R. 774 (Bankr. N.D. Ill. 2000) ("if administrative proceedings in pursuit of a governmental entity's regulatory powers are excepted from the automatic stay, continuation of the same proceedings after a debtor's discharge should not violate the post-discharge injunction under § 524(a).").

Section 362(b)(4) excepts from the automatic stay:

[C]ommencement or continuation of an action or proceeding by a governmental unit...to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power[.]

11 U.S.C. § 362(b)(4).

In *In re Wade*, 948 F.2d 1122, 1124 (9th Cir. 1991), the Court of Appeals held that, pursuant to section 362(b)(4), attorney disciplinary proceedings are exempt from the automatic stay. There, a day after the debtor filed a bankruptcy petition, the Arizona Bar initiated disciplinary proceedings against the debtor, who was an attorney and a member of the Arizona Bar. In the disciplinary proceedings, the Arizona Bar alleged that the debtor had violated certain ethical rules promulgated by the Arizona Supreme Court. Months later, the Arizona Bar filed a motion for relief from the automatic stay imposed under 11 U.S.C. § 362(a)(1) and also asserted that the disciplinary proceedings, which were brought by a governmental unit to enforce its police or regulatory power, were excepted from the automatic stay under 11 U.S.C. § 362(b)(4).

The Court of Appeals stated that, "[u]nder Arizona law, the Bar is an instrumentality of the Arizona Supreme Court for the purpose of conducting disciplinary proceedings[.]" and that the purposes of the Arizona Bar's disciplinary proceedings are to: "[(1)] protect the public, the profession, and the administration of justice, and (2) to deter other lawyers from improper conduct." *Id.*, at 1124 (quotation and citation omitted). The Court of Appeals further explained that, "[i]n conducting disciplinary proceedings, the Bar [wa]s enforcing its police or regulatory power[.]" and noted that "given the close relationship between the Arizona Supreme Court and the Bar, the

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U.S. Supreme Court has held that the Bar engages in state action when it conducts disciplinary proceedings." *Id.* (citing *Bates v. State Bar of Arizona*, 433 U.S. 350, 359, 97 S.Ct. 2691, 2696, 53 L.Ed.2d 810 (1977)). Consequently, the Court of Appeals held that the Arizona Bar's actions were exempted from the automatic stay under 11 U.S.C. § 362(b)(4). *Id.*, at 1123. See also *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107 (9th Cir. 2005) (enforcement of state bar disciplinary rules is within the "police or regulatory powers" exception; such enforcement constitutes action affecting "the health, welfare, morals, and safety.").

F. Standards for Holding a Creditor in Civil Contempt

"[S]ection 524(a) may be enforced by the court's contempt power under 11 U.S.C. section 105(a)." *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). The party seeking relief has the burden of proof. *In re Mellem*, 625 B.R. 172, 178 (9th Cir. BAP 2021), *aff'd*, 2021 WL 5542226 (9th Cir. Nov. 26, 2021). The moving party must demonstrate that the alleged contemnor: "(1) knew the discharge injunction applied; and (2) intended the actions that violated the injunction." *Id.* (citing *In re Marino*, 577 B.R. 772, 782-83 (9th Cir. BAP 2017), *aff'd in part & appeal dismissed in part*, 949 F.3d 483 (9th Cir. 2020).

In *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1801-02, 204 L.Ed.2d 129 (2019), the Supreme Court assessed the proper standard for holding a party in contempt for violation of the discharge injunction under section 524(a). Taking note of contempt proceedings outside of the bankruptcy context, the Supreme Court stated: "outside the bankruptcy context, ... civil contempt 'should not be resorted to where there is [a] *fair ground of doubt* as to the wrongfulness of the defendant's conduct.'" (quoting *California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618, 5 S.Ct. 618, 28 L.Ed. 1106 (1885)) (emphasis in original). The Supreme Court also noted: "[the] [fair ground of doubt] standard is generally an *objective* one. We have explained before that a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable." *Id.*, at 1802 (emphasis in original).

Finally, the Supreme Court explained: "[the] [fair ground of doubt] standard reflects the fact that civil contempt is a 'severe remedy,' and that principles of 'basic fairness requir[e] that those enjoined receive explicit notice' of 'what conduct is outlawed'

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before being held in civil contempt." *Id.* (quoting *Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974)). In the bankruptcy context, the Supreme Court held that:

A court may hold a creditor in civil contempt for violating a discharge order where there is not a "fair ground of doubt" as to whether the creditor's conduct might be lawful under the discharge order. In our view, that standard strikes the "careful balance between the interests of creditors and debtors" that the Bankruptcy Code often seeks to achieve.

Id., at 1804.

[T]raditional civil contempt principles apply straightforwardly to the bankruptcy discharge context. The typical discharge order entered by a bankruptcy court is not detailed. See *supra*, at 1799 – 1800. Congress, however, has carefully delineated which debts are exempt from discharge. See §§ 523(a)(1)–(19). Under the fair ground of doubt standard, civil contempt therefore may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope.

Id. (citations omitted).

G. Discriminatory Treatment Under 11 U.S.C. § 525(a)

11 U.S.C. § 525(a) "prohibits a governmental unit from deny[ing], revok[ing], suspend[ing], or refus[ing] to renew' a debtor's license 'solely because' the debtor filed for bankruptcy or failed to pay a dischargeable debt." *Albert-Sheridan*, 960 F.3d at 1196; 11 U.S.C. § 525(a). "Although [11 U.S.C. § 525(a)] prevents discrimination against a debtor based on a dischargeable debt, the inverse is also true: '[t]he government *may* take action that is otherwise forbidden when the debt in question is one of the disfavored class that is nondischargeable.'" *Albert-Sheridan*, 960 F.3d at 1196 (citing *F.C.C. v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 307, 123 S.Ct. 832, 154 L.Ed.2d 863 (2003)).

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In *Albert-Sheridan*, the Court of Appeals considered whether the State Bar could condition reinstatement of an attorney's license to practice law on the payment of disciplinary sanctions and the costs of the State Bar's disciplinary proceedings. There, the debtor contended that the State Bar violated the anti-discrimination provision of 11 U.S.C. § 525(a) by failing to reinstate her law license when she had not paid these debts. *Id.*, at 1196. Like in *Findley*, *Kassas* and *Scheer*, the debtor was an attorney who was suspended from the practice of law. The California Supreme Court had ordered that the debtor be suspended for 30 days, and that her suspension would be continued until she paid the sanctions (or reimbursed the CSF, to the extent of any payment from the CSF to the payees) and the costs of the disciplinary proceedings to the State Bar.

Referencing *Findley*, the Court of Appeals noted that it "ha[d] already addressed whether a debtor may discharge the costs of the State Bar's attorney disciplinary proceedings imposed under California Business and Professions Code § 6086.10. The clear answer is no." *Id.*, at 1192. As noted by the Court of Appeals, "California law classifies these costs as 'penalties, payable to and for the benefit of the State Bar . . . , a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public.'" *Id.*, quoting Cal. Bus. & Prof. Code § 6086.10(e). Consequently, the Court of Appeals held that the debt owed to the State Bar for costs of the disciplinary proceedings was nondischargeable under section 523(a)(7). [FN 3]

As to the debtor's claim of discrimination under section 525(a), considering that the costs of the disciplinary proceedings were nondischargeable, the Court of Appeals held that "the State Bar [wa]s within its right to condition reinstatement [of the debtor's license] on the payment of that debt." *Id.*, at 1196.

III. ANALYSIS

A. Judicial Notice

Here, the Court will take judicial notice of the documents in Defendant's RJN and overrule the Evidentiary Objections. The documents contained in the Defendant's RJN include public records from the Disciplinary Actions. Moreover, Plaintiff attached the July 2014 Order, which specifically refers to the March 2014 Opinion,

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and the March 2017 Order, which specifically refers to the September 2016 Opinion, to the Complaint. *See* Exhs. 2 and 3 to the Complaint. As such, the Complaint necessarily relies on the March 2014 Opinion and the September 2016 Opinion. Consequently, Defendant's RJN will be granted.

B. Dischargeability of Debt

Before Plaintiff's license to practice law is reinstated, the Disciplinary Orders require that she pay: (1) restitution payments to her former clients or reimbursement to the CSF; and (2) disciplinary costs to Defendant in accordance with Cal. Bus. & Prof. Code § 6086.10, i.e., the Costs. Exhs. 2 and 3 to the Complaint. Plaintiff alleges, and Defendant does not contest, that any restitution and/or reimbursement debts contained in the Disciplinary Orders were discharged in the Bankruptcy Case. However, the Costs were not discharged in the Bankruptcy Case. *See Kassas*, 49 F.4th at 1166; *Albert-Sheridan*, 960 F.3d at 1192; *Findley*, 593 F.3d at 1054. In alleging that the State Bar cannot condition her reinstatement on payment of the Costs, Plaintiff is not properly taking into account these decisions of the Ninth Circuit Court of Appeals.

C. Violation of the Discharge Injunction

In order for Plaintiff to state a plausible claim under 11 U.S.C. § 524(a), Plaintiff would have to allege facts which allow the Court to draw a reasonable inference that Defendant violated the discharge injunction. In the Complaint, Plaintiff has not done so.

Although the Discharge Order may have eliminated Defendant's ability to enforce the restitution and/or reimbursement debts as a personal liability, it did not void *ab initio* the liability imposed by the Disciplinary Orders. The Discharge Order merely disabled Defendant from enforcing the Disciplinary Orders as to Plaintiff's *dischargeable* debts. In addition to dischargeable debt, the Disciplinary Orders also imposed nondischargeable debt, i.e., the Costs, and other nonmonetary conditions which Plaintiff must satisfy before her license is reinstated.

Second, the First Disciplinary Proceeding, which began prepetition, and the Second Disciplinary Proceeding, which began postpetition, do not constitute collection activity. Rather, the Disciplinary Actions constituted the commencement or

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continuation of government proceedings under Defendant's regulatory power. These proceedings concern Plaintiff's improper collection of fees in advance, her violation of California law regarding the provision of residential loan modifications services by attorneys and her unauthorized practice of law, by contracting to provide residential loan modification services to individuals who resided outside of California.

In support of her position, Plaintiff cites to various cases which held that judgments obtained in violation of the discharge injunction are void. *See In re Gurrola*, 328 B.R. 158 (9th Cir. BAP 2005) (creditor's pursuit of default judgment regarding debtor's nonpayment for security system violated discharge injunction; resulting default judgment was void); *In re Pavelich*, 229 B.R. 777 (9th Cir. BAP 1999) (judgment against debtors involving nonpayment of prepetition attorneys' fees, which judgment was entered after debtors' liability to pay fees was discharged, was void); *In re Slater*, 573 B.R. 247 (Bankr. D. Utah 2017) (creditors violated discharge injunction by obtaining default judgment based on debtors' failure to pay discharged debt arising from prepetition promissory note; default judgment was void); *In re Motley*, 268 B.R. 237 (Bankr. C.D. Cal. 2001) (lessor's judgment obtained post-discharge for past-due rents arising from debtors' prepetition guarantee of related lease was void). These cases concern actions in state court to obtain a judgment concerning a discharged debt; however, Plaintiff has not cited similar precedent regarding disciplinary proceedings or other regulatory proceedings.

Here, the Disciplinary Actions concerned Plaintiff's culpability, as an attorney, for ethical violations. The Bar Court determined that Plaintiff's conduct was unlawful and imposed consequences for Plaintiff's violation of her ethical responsibilities. The nonmonetary conditions to the reinstatement of Plaintiff's license to practice law and the required payment of the Costs, as set forth in the Disciplinary Orders, do not violate the permanent discharge injunction of 11 U.S.C. § 524(a), and the resulting Disciplinary Orders are not void.

D. Civil Contempt

In order to make sufficient allegations that Defendant may be held in contempt for violation of the Discharge Order, Plaintiff would have to plead facts which allow the Court to draw a reasonable inference that there was no fair ground of doubt as to whether Defendant's conduct, i.e., proceeding with the Disciplinary Actions,

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obtaining the Disciplinary Orders and conditioning the reinstatement of Plaintiff's license on satisfaction of the nondischargeable obligations, violated the Discharge Order. However, Plaintiff has not met this burden in the Complaint.

Although the restitution and CSF payment obligations as set forth in the Disciplinary Orders were discharged and are unenforceable, the Disciplinary Orders require the payment of additional, nondischargeable debt, i.e., the Costs. Moreover, as discussed above, the Disciplinary Orders contained several nonmonetary conditions which Plaintiff must satisfy before her license is reinstated.

As discussed above, the Costs are not dischargeable. *Kassas*, 49 F.4th at 1166. Plaintiff admits that it was not until 2022, that the "[Court of Appeals] confirmed the law in this circuit holding that mandatory payment obligations like the ones [Plaintiff] was ordered to pay by the [California Supreme Court] were unenforceable by anyone because they involved discharged debt." Opposition, p. 3. The Disciplinary Actions took place between 2012 and 2017, many years before the Court of Appeals clarified, in *Kassas*, that CSF debts were dischargeable in bankruptcy. Until 2022, there was a fair ground of doubt that seeking repayment to the CSF violated the Discharge Order.

Here, assuming that the State Bar's refusal to reinstate Plaintiff's license violates section 524(a), to the extent that Plaintiff has not paid the Costs, which are nondischargeable, or satisfied the nonmonetary conditions of her reinstatement, there is a fair ground of doubt that such conduct constitutes a violation of the Discharge Order. For example, in *Albert-Sheridan*, the Ninth Circuit Court of Appeals held that it was not unfair discrimination to refuse to reinstate an attorney's license, where the attorney has not paid assessed disciplinary costs to the State Bar.

Finally, the cases on which Plaintiff relies in support of her contention are inapposite. Those cases concern creditors' violation of the discharge injunction by seeking entry of a judgment in civil litigation; these cases do not concern an entity, like the State Bar, which is enforcing its police or regulatory power. Moreover, these cases predate the Supreme Court's ruling in *Taggart*, which established the standard that a court may hold a creditor in civil contempt for violating a discharge order only where there is not a "fair ground of doubt" as to whether the creditor's conduct might be lawful under the discharge order. *Taggart*, 39 S.Ct. at 1804. See *In re Kabling*, 551 B.R. 440, 446 (9th Cir. BAP 2016) (after debtors obtained discharge, homeowners

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association violated discharge injunction by filing complaint against debtors, which included demand for attorneys' fees based on debtors' prepetition conduct); *Gurrola*, 328 B.R. at 171 (9th Cir. BAP 2005) (creditor's pursuit of default judgment regarding debtor's nonpayment for security system obtained prepetition violated discharge injunction); *Pavelich*, 229 B.R. at 784 (after debtors obtained discharge, creditor obtained judgment against debtors based on debtor's failure to pay prepetition attorneys' fees); *Slater*, 573 B.R. at 251 (creditors commenced collection litigation post-discharge regarding debtors' nonpayment of prepetition debt); *Motley*, 268 B.R. at 242 (after debtors obtained discharge, lessor obtained judgment for past-due rents arising from debtors' prepetition guarantee of related lease). Unlike the creditors in these cases, Defendant would not have violated the discharge injunction because it instituted and continued the Disciplinary Actions in response to, among other things, Plaintiff's unauthorized practice of law, nor if Defendant conditioned the reinstatement of Plaintiff's license on Plaintiff paying the Costs and satisfying the nonmonetary conditions of the Disciplinary Orders.

Plaintiff has not stated a claim for relief that is plausible under 11 U.S.C. § 524(a); she has not plead facts in the Complaint which allow the Court to draw a reasonable inference that Defendant violated the discharge injunction and should be held in civil contempt. Because Plaintiff possibly could cure such a deficiency by amendment, the Court will give Plaintiff leave to amend the Complaint.

E. Discriminatory Treatment

In order for Plaintiff to state a plausible claim that Defendant violated the anti-discrimination provision of 11 U.S.C. § 525(a), Plaintiff would have to plead facts which allow the Court to draw a reasonable inference that Defendant has denied reinstatement of Plaintiff's license to practice law because Plaintiff filed for bankruptcy or failed to pay a discharged debt. In the Complaint, Plaintiff has not plead facts to meet this burden.

First, as stated above, the Costs are nondischargeable under section 523(a)(7). *See Kassas*, 49 F.4th at 1166; *Albert-Sheridan*, 960 F.3d at 1192; *Findley*, 593 F.3d at 1054. Defendant may predicate Plaintiff's reinstatement of her license to practice law on payment of that nondischargeable debt. *Albert-Sheridan*, 960 F.3d at 1196; *see also In re Albert-Sheridan*, 808 Fed.Appx. 565 (9th Cir. 2020). Moreover, the

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Disciplinary Orders also provide that Plaintiff must satisfy nonmonetary conditions regarding her rehabilitation, fitness to practice and learning and ability in the general law.

Because Plaintiff has not alleged that she has paid the Costs and that she has met each of the nonmonetary conditions for her reinstatement, as set forth in the Disciplinary Orders, the Complaint does not plead sufficient facts to support a claim for violation of 11 U.S.C. § 525(a). [FN 4] As a result, the Court will dismiss the claim for violation of 11 U.S.C. § 525(a). Because these deficiencies could possibly be cured by amendment, Plaintiff will be allowed leave to amend the Complaint regarding her payment of the Costs and her compliance with the nonmonetary conditions that are set forth in the Disciplinary Orders.

IV. CONCLUSION

The Court will grant the Motion, with leave to amend. No later than fourteen days after the entry of the order, Plaintiff may file and serve an amended complaint, and the State Bar may file a response to that amended complaint within 28 days thereafter.

The State Bar must submit the order within seven (7) days.

Plaintiff's Evidentiary Objections to the Declaration of Suzanne C. Grandt [doc. 17]

Exhs. 1, 2, 4 and 5: overruled.

FOOTNOTES

FN 1: As discussed in Sections II.B. and III.A., the Court will take judicial notice of the exhibits attached to the Grandt Declaration.

FN 2: Pursuant to Cal. Bus. & Prof. Code § 6086.10(a):

Any order imposing a public reproof on a licensee of the State Bar shall include a direction that the licensee shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the [California] Supreme Court shall include a direction that the licensee shall pay costs. An order imposing

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costs pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment. The State Bar may collect these costs through any means provided by law.

FN 3: Because they were to compensate costs which the prevailing party had incurred in responding to the debtor's misuse of the discovery process, the Court of Appeals held that the discovery sanctions against the debtor were dischargeable. The Court of Appeals expressly declined to consider the dischargeability of CSF payments, noting that the issue was not before it. *Albert-Sheridan*, 960 F.3d at 1194 n.5.

FN 4: In the Opposition, Plaintiff represents that she had advised the State Bar that Plaintiff "already has substantially satisfied the nonmonetary aspects" of the Disciplinary Orders. Reply, doc. 16, p. 9. However, the Complaint does not include specific allegations that Plaintiff has satisfied the nonmonetary conditions to the reinstatement of her license, as set forth in the Disciplinary Orders.

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| Party Information |
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Debtor(s):

Marilyn S. Scheer

Represented By
David M Reeder

Defendant(s):

The State Bar of California, a public

Represented By
Suzanne C Grandt

Movant(s):

The State Bar of California, a public

Represented By
Suzanne C Grandt

Plaintiff(s):

Marilyn S Scheer

Pro Se

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Trustee(s):

David Seror (TR)

Pro Se

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1:13-14649 Marilyn S. Scheer

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Adv#: 1:23-01016 Scheer v. The State Bar of California, a public corporation

#14.00 Status conference re: complaint for declaratory and injunctive relief,
and damages for:
(1) Violation of the permanent injunction of 11 U.S.C. §§ 105, 524 & 727 and
(2) Discriminatory treatment under 11 U.S.C. §§105& 525(a)

fr. 7/26/23; 8/23/23

Docket 1

Tentative Ruling:

See cal. no. 13.

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| Party Information |
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Debtor(s):

Marilyn S. Scheer

Represented By
David M Reeder

Defendant(s):

The State Bar of California, a public

Represented By
Suzanne C Grandt

Plaintiff(s):

Marilyn S Scheer

Pro Se

Trustee(s):

David Seror (TR)

Pro Se

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1:23-10270 Linda Ezor Swarzman

Chapter 11

Adv#: 1:23-01018 Morris v. Swarzman

#15.00 Motion to (1) Dismiss Complaint Under Civil Rule 12(b)(6); and
(2) Strike Certain Portions of the Complaint Under Civil Rule 12(f); or
(3) Alternatively, Order a More Definite Statement Under Civil Rule 12(e)

fr. 9/6/23

Docket 5

Tentative Ruling:

The Court will grant the motion to dismiss (the "Motion") [doc. 5] as to the claims of April C. Morris ("Plaintiff") against the debtor Linda Ezor Swarzman ("Defendant"), with leave to amend the complaint.

APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE

"A motion to dismiss [pursuant to Fed. R. Civ. P. 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

"[P]ro se pleadings ... are to be liberally construed on a motion to dismiss." *Gault v. United States*, 2021 WL 4503389, at *1 (C.D. Cal. Sept. 30, 2021) (quoting *Capp v. Cnty. of San Diego*, 940 F.3d 1046, 1052 (9th Cir. 2019)). "*Iqbal* incorporated the *Twombly* pleading standard and *Twombly* did not alter courts' treatment of *pro se* filings; accordingly, we continue to construe *pro se* filings liberally when evaluating them under *Iqbal*." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). "A *pro se* complaint must be 'liberally construed,' since 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Entler v. Gregoire*, 872 F.3d 1031, 1038 (9th Cir. 2017) (quoting

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Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)).

With respect to complaints, Fed. R. Civ. P. ("Rule") 10(b) provides: "[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances...." Rule 10(b).

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." "Particularity" means that allegations must be stated with "specificity including an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Lepton Labs, LLC v. Walker*, 55 F.Supp. 3d 1230, 1243 (C.D. Cal 2014) (citing *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir 2007)). Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged[.]" *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993).

Rule 12(e) states, in relevant part, that "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." If the requirements of the general rule as to pleading are satisfied, and the opposing party is fairly notified of the nature of the claims, a motion for a more definite statement is inappropriate. *Castillo v. Norton*, 219 F.R.D. 155, 163 (D. Ariz. 2003).

Pursuant to Rule 12(f), "[t]he court may strike from a pleading...any redundant, immaterial, impertinent or scandalous matter." "The function of a Rule 12(f) motion strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). Motions to strike are "considered an exceptional remedy and ... generally disfavored[.]" See *Judicial Watch, Inc. v. Dep't of Commerce*, 224 F.R.D. 261, 263 (D. D.C. 2004) (quotation and citation omitted).

Allegations are redundant if they "constitute a needless repetition or other averments or are foreign to the issue." See *Sliger v. Prospect Mortgage, LLC*, 789 F.Supp.2d 1212, 1216 (E.D. Cal. 2011). A matter is immaterial if it "has no essential or

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important relationship to the claim for relief or the defenses being pled." *Whittlestone*, at 974; *see also Sliger*, at 1216.

An "[i]mpertinent" matter consists of statements that do not pertain, and are not necessary, to the issues in question." *Fantasy Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds in Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534-35, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994). Finally, "[s]candalous" generally refers to any allegation that unnecessarily reflects on the moral character of an individual or states anything in repulsive language that detracts from the dignity of the court." *Anderson v. Davis Polk & Wardwell LLP*, 850 F.Supp.2d 392, 416 (S.D.N.Y. 2012); *see also Gauthier v. U.S.*, 2011 WL 3902770 at *12 (D. Mass. 2011) (material is "scandalous" if it "improperly casts a derogatory light on someone.").

APPLICABLE BANKRUPTCY STATUTES

Pursuant to 11 U.S.C. § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition." To prevail on a § 523(a)(2)(A) claim, plaintiffs must prove by a preponderance of the evidence the following five elements:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct;
and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Under 11 U.S.C. § 523(a)(6), a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." "[A]n intentional breach of

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contract cannot give rise to non-dischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law." *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). Fraud is an action in tort. *In re Haynie*, 621 B.R. 456, 470 (Bankr. D. Idaho 2020), *aff'd*, 624 B.R. 872 (B.A.P. 9th Cir. 2021).

[A]lthough § 523(a)(6) *generally* applies to torts rather than to contracts and an intentional breach of contract *generally* will not give rise to a nondischargeable debt, where an intentional breach of contract is accompanied by tortious conduct which results in willful and malicious injury, the resulting debt is excepted from discharge under § 523(a)(6).

In re Jercich, 238 F.3d 1202, 1205 (9th Cir. 2001) (emphasis in original).

THE COMPLAINT

With respect to Plaintiff's claims under sections 523(a)(2) and (a)(6), the complaint (the "Complaint") [doc. 1] makes, in relevant part, the following factual allegations:

Plaintiff is a single parent who earns her income by buying, flipping and selling real estate. Complaint, p. 1. On May 9, 2022, Defendant's son and business partner Ron Larson fka Ron Swarzman ("Larson") sent a text message to Plaintiff saying he desperately needed help and requested a loan of \$250,000. *Id.*, pp. 1 and 3. Larson knew Plaintiff had funds in that amount because Plaintiff had just sold her townhome for \$250,000. *Id.*, p. 3

Larson told Plaintiff that his company Redfish was selling three pieces of real estate, however the closings were delayed because certain appliances that were to be installed in the properties had not yet arrived. *Id.* Larson told Plaintiff that he and Defendant needed a loan for 2-3 weeks to close on the properties. *Id.* According to Larson, the appliances were the only things holding up the closings. *Id.*

Plaintiff agreed to a one-month loan in the amount of \$220,000, and on May 9, 2022, Plaintiff and Defendant executed a note in that amount, with a maturity date of June 9, 2022 (the "Note"). *Id.* and Exh. 3 thereto. The Note provided that, in addition to the principal amount, interest in the amount of \$5,000

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would be due on June 9, 2022. Exh. 3 to the Complaint. The same day, Plaintiff wired \$220,000 to Defendant (the "Loan"). Complaint, pp. 3-4 and Exh. 2 thereto.

On June 8, 2022, Plaintiff received a text message from Larson stating he needed 7-10 more days to get the properties sold. *Id.*, p. 4 and Exh. 12 thereto. Larson said he was still waiting on the appliances and asked Plaintiff to extend the Note's maturity date to June 21, 2022. Complaint, p. 4. On June 9, 2022, Plaintiff and Defendant executed an amended note that extended the maturity date for the Loan to June 21, 2022 (the "Amended Note"). *Id.* and Exh. 4 thereto. The Amended Note provided that, in addition to the principal amount, interest in the amount of \$6,000 would be due on June 21, 2022. *Id.*

Defendant has not repaid the Loan to Plaintiff. Complaint, p. 2. Defendant knowingly and willfully lied to Plaintiff because, at the time she executed the Note, Defendant knew she would not or could not repay the Loan. *Id.*, p. 1. In lying to Plaintiff, Defendant willfully and knowingly harmed Plaintiff. *Id.*, pp. 1 and 6. Defendant and Larson defrauded Plaintiff by maliciously taking her money under false pretenses. *Id.*, p. 6. Instead of repaying Plaintiff, Defendant used the Loan to expand Defendant's real estate business by continuing to purchase pieces of real property and build her family's wealth. *Id.*, pp. 1-2.

ANALYSIS

Considering the elements of section 523(a)(2)(A), Plaintiff has satisfied elements 1, 2 and 3. These elements also apply to establishing the issue of tortious conduct under section 523(a)(6).

However, Plaintiff needs to address her reliance on Defendant's and/or Larson's statement(s) and/or their conduct upon which she relied: (1) when she provided the Loan and (2) when she extended the due date for the Loan.

In an amended complaint, Plaintiff must identify the specific statements of Defendant and/or Larson on which Plaintiff relied, before she made the Loan, and state whether or not she would have made the Loan, if Defendant or Larson had not made those statements.

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In addition, regarding the due date for the Loan, Plaintiff must state what she would have done differently (if anything) if Defendant and/or Larson had not informed her that Defendant would repay the Loan by the extended maturity date, as set forth in the Amended Note.

Having assessed the standards, and taking into account the analysis set forth above:

- 1) The Court will deny Defendant's request to strike portions of the Complaint.
- 2) The Court will deny Defendant's request for a more definite statement.
- 3) Pursuant to Rule 10(b), in any amended complaint, Plaintiff must state her claims in numbered paragraphs, each limited as far as practicable to a single set of circumstances.
- 4) In accordance with Rule 12(b)(6), the Court will grant the Motion as to Plaintiff's claim under 11 U.S.C. § 523(a)(2) and (a)(6), with leave to amend the Complaint to address Plaintiff's reliance on specified statements and/or conduct of Defendant and/or Larson when Plaintiff made the Loan and whether or not Plaintiff would have made the Loan and/or extended the due date for the Loan, if Defendant and/or Larson had not made those statements to Plaintiff.

Plaintiff must file and serve an amended complaint **no later than 21 days after the entry of the order dismissing the Complaint.**

No later than 14 days after the filing and service date of the amended complaint, Defendant must file and serve a response to the amended complaint.

The Court will prepare the order.

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| Party Information |
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Debtor(s):

Linda Ezor Swarzman

Represented By
Susan K Seflin

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Jessica Wellington
David Seror

Defendant(s):

Linda Ezor Swarzman

Represented By
Jessica Wellington

Plaintiff(s):

April C Morris

Pro Se

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Adv#: 1:23-01018 Morris v. Swarzman

#16.00 Status conference re: complaint

fr. 9/6/23

Docket 1

Tentative Ruling:

The Court will continue the status conference to **November 15, 2023 at 1:30 p.m.**
The parties must file a joint status report no later than **November 1, 2023.**

The Court will prepare the scheduling order.

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| Party Information |
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Debtor(s):

Linda Ezor Swarzman

Represented By
Susan K Seflin
Jessica Wellington
David Seror

Defendant(s):

Linda Ezor Swarzman

Represented By
Jessica Wellington

Plaintiff(s):

April C Morris

Pro Se